STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL J. GARCIA, Charging Party-Appellant, v EATON RAPIDS EDUCATION ASSOCIATION and MICHIGAN EDUCATION ASSOCIATION, Respondents-Appellees.	UNPUBLISHED May 27, 2003 No. 234584 MERC LC No. 00-000015

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Appellant Michael Garcia appeals as of right from a decision and order by the Michigan Employment Relations Commission (MERC) dismissing his unfair labor practice charge against respondents Eaton Rapids Education Association and Michigan Education Association.[1] We affirm.

I. FACTS

Appellant was employed at Eaton Rapids High School as a probationary, i.e., non-tenured, teacher for one school year, but the Eaton Rapids Board of Education adopted a resolution concluding that his work was unsatisfactory and decided not to renew his employment for another school year. Garcia, acting in propria persona, filed an unfair labor practice charge with the Michigan Employment Relations Commission (MERC) against defendants Eaton Rapids Education Association (EREA) and Michigan Education Association (MEA) enumerating numerous grounds on which he was dissatisfied with their representation of his interests.[2] In a September 14, 2000, decision and recommended order, Administrative Law Judge (ALJ) Nora Lynch recommended that the MERC dismiss the unfair labor practice charge. In a May 10, 2001, decision and order, the MERC adopted the ALJ's recommended order and

[1] Because there is no significant distinction between the two respondents for purposes of this case, we use the singular term "the MEA" in this opinion to refer to either or both as appropriate.

[2] There is no significant distinction between the EREA and MEA for purposes of this appeal. Accordingly, this author will simply refer to "the MEA" to include either or both the EREA and the MEA as appropriate.

dismissed the case. Garcia, acting in propria persona, appeals as of right from the MERC decision and order.

II. ORAL ARGUMENT

First, appellant argues that the MERC erred by denying his request for further oral argument after the hearing before the Administrative Law Judge (ALJ). We disagree. MCL 423.216(b) provides that the MERC "may" allow such further argument. This means that the MERC has discretion whether to grant further oral argument. See *Preserve the Dunes, Inc v Dep't of Environmental Quality,* 253 Mich App 263, 296-297; 655 NW2d 263 (2002). We conclude that there was no abuse of discretion here, because it is not apparent that the MERC could not adequately respond to appellant's claims based on the written arguments presented and the transcript of the hearing before the ALJ. Contrary to appellant's argument, he was not denied a right to present "oral evidence" in violation of MCL 423.11(1), because the making of oral argument does not constitute "evidence." We also conclude that there was no violation of any protections under the federal or state due process clauses, or the fair and just treatment clause of Const 1963, art 1, § 17, arising from the denial of further oral argument, because appellant was allowed to present written argument to the MERC, and was also afforded oral argument previously before the ALJ. This sufficed to constitute an adequate opportunity to be heard in a meaningful time and manner. *Hanlon v Civil Service Comm,* 253 Mich App 710, 723; ___ NW2d ___ (2002).

III. DUE PROCESS

Next, appellant argues that the ALJ proceeding should not have been conducted as a hearing on the MEA's motion for summary disposition because of a lack of adequate notice, and further, that his due process rights were violated where the hearing lasted only one hour. We disagree. Given the timing of the filing of the motion for summary disposition by the MEA before the ALJ proceeding, the filing of a response to that motion by appellant before the hearing, and the fact that the summary disposition hearing concerned the same claims as any evidentiary hearing that might have been held, we conclude that appellant received adequate notice to be heard in a meaningful time and manner regarding the motion for summary disposition. *Hanlon, supra.* With regard to the length of the hearing, we decline to hold that due process requires an arbitrary minimum time limit for a hearing. There is no indication here that the ALJ prevented appellant from making arguments regarding any particular points that he wished to address, that he asked for the hearing to last longer, or that the ALJ imposed any particular time limits on him. Thus, this issue does not warrant appellate relief.

IV. TENURE CLAIM

Appellant effectively asserts that the MERC improperly relied on the resolution of his separate tenure claim in resolving the present case. We disagree. It is apparent from a review of the MERC decision and order that the unfair labor practice charge was dismissed due to the lack of evidence of arbitrary, discriminatory, or bad faith conduct by the MEA, not by an improper consideration of the tenure claim.

V. PROCEDURAL RIGHTS

Appellant asserts that he should have, but did not, receive special consideration at the ALJ proceeding with regard to being informed of his procedural rights because he was acting pro se rather than represented by counsel. We disagree. "People are presumed to know the law." *Adams Outdoor Advertising v East Lansing*, 463 Mich 17, 27 n 7; 614 NW2d 634 (2000). Thus, in acting as his own counsel, appellant was not entitled to special consideration in terms of being informed of his procedural rights.

VI. DENIAL OF AMENDMENT TO CHARGES

Appellant also asserts that the MERC erred by denying his request to amend the "charges" stated in his unfair labor practice charge. We disagree. Because R 423.454(1), as in force at all relevant times,[3] provided that the MERC "may" permit a charging party to amend a charge, the decision whether to allow an amendment was discretionary. *Preserve the Dunes, supra.* Because it is evident that there was no meaningful difference between the substantive content of the initial charges and the proposed amendments, the MERC did not abuse its discretion by denying appellant's request to amend the charges after the ALJ proceeding was concluded. Further, given the lack of any significant difference between the original charges and the proposed amendments, there is no basis for concluding that the MERC's denial of appellant's motion to amend constituted a violation of the constitutional rights asserted by appellant.

VII. DUTY OF FAIR REPRESENTATION

Next, appellant has not established that the MEA violated the duty of fair representation with regard to its handling of certain grievances. The duty of fair representation requires a union to (1) serve the interests of all members without hostility or discrimination, (2) exercise discretion with complete good faith and honesty, and (3) avoid arbitrary conduct. *Goolsby v Detroit*, 419 Mich 651, 664; 358 NW2d 856 (1984). However, a union has considerable discretion to decide which grievances to press and which to settle and to consider the likelihood of success and the interests of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146; 205 NW2d 167 (1973). With regard to three of the grievances, appellant faults the MEA for settling the grievances for the benefit of other union members, but with no benefit to him. However, these grievances, filed after the school board had already decided not to renew appellant's employment as a probationary teacher, were related to the evaluation of appellant's performance. In light of the holding in *Lipka v Brown City Community Schools (On Rehearing)*, 403 Mich 554, 558-559; 271 NW2d 771 (1978), that a school board does not have to provide reasons for concluding that a probationary teacher's performance is unsatisfactory and that such a decision cannot be reviewed by the State Tenure Commission, the MEA reasonably could have determined that there was no likelihood of obtaining meaningful relief for appellant regarding these grievances. Thus, settling those grievances with understandings that might benefit other teachers in the bargaining unit was a reasonable exercise of discretion. Similarly, there is no basis for concluding that the MEA failed to properly exercise its discretion in settling another grievance filed by appellant in a manner that favored him by expunging a negative evaluation from his personnel file. The MEA reasonably could have concluded that its agreement not to rely on that expungement to attack the

[3] R 423.454 was rescinded effective February 1, 2002, after the MERC's resolution of this case.

school board's conclusion that appellant's performance was unsatisfactory was virtually no concession at all, given controlling case law establishing the limited scope of review of such a decision by the school board.

VIII. STATUTORY PROVISIONS

Appellant also argues that the settlement of the grievances violated various statutory provisions. However, the provisions cited are plainly inapposite. There was no indication of discrimination to encourage or discourage membership in a labor organization as is prohibited by MCL 423.210(3)(b). Appellant's reference to MCL 423.211 is illogical because his charges against the MEA are predicated on it having allegedly failed to adequately handle his grievances, not a claim that the MEA prevented him from directly bringing his grievances to an employer. The MEA did not coerce appellant in any way violative of MCL 423.210(3)(a)(i) by settling these grievances. MCL 423.317(3) sets forth a definition of "labor organization" and does not in itself impose any duties. Lastly, there was no interference with appellant's rights under MCL 423.209, which relates to a public employee's right to support labor organizations and engage in lawful concerted activities, by the settlement of the grievances.

Also, contrary to appellant's arguments, even assuming that these constitutional protections somehow apply in this context to the MEA, a nongovernmental actor, there is no basis for concluding that the settlement of any of these grievances violated appellant's First Amendment right to petition for redress of grievances or his right to equal protection. None of the settlement agreements limit appellant's ability to request favorable treatment from government actors. See *Arim v General Motors Corp*, 206 Mich App 178, 189; 520 NW2d 695 (1994) (discussing First Amendment right to petition for redress of grievances as involving right to petition for favorable government action). In light of the sensible grounds for the course of action followed by the MEA, there is no reasonable basis for inferring that its handling of the grievances was based on any intentional discrimination toward appellant and, thus, no basis for an equal protection claim in this regard. *Harville v State Plumbing & Heating, Inc*, 218 Mich App 302, 311; 553 NW2d 377 (1996).

IX. SUMMARY DISPOSITION

Finally, appellant has not established that the MERC erred in dismissing his case for failure to state a claim. First, contrary to the implication of appellant's argument, the Federal Rules of Civil Procedure were inapplicable to this proceeding before a state administrative agency. Indeed, Rule 1 of the Federal Rules of Civil Procedure provides that those rules apply to civil suits in federal district court. Also, appellant's argument that MCL 24.278(2) does not allow summary disposition is flawed. MCL 24.278(2) provides:

> Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

It is apparent that this statute is not a complete list of the means by which the MERC may dispose of a case because it does not refer to deciding a case on the merits. Rather, the statute is directed at means through which parties to a case may resolve the case by agreement or inaction. Further, our Supreme Court has concluded that the MERC may resolve an appropriate case by

summary disposition for failure to state a claim without conducting a full evidentiary hearing. *Smith v Lansing School Dist*, 428 Mich 248, 257-259; 406 NW2d 825 (1987).

Affirmed.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette